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Changes to Family Code Good for Children, Texas

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The new statutory scheme found in Chapter 107 of the Texas Family Code has the potential to make Texas a leader on child custody evaluations.

It all begins with the deletion of the term “social study,” the insertion of “Child Custody Evaluation” in its place, and the upending of a portion of the Family Code in place since 2007.

The new law will provide lawyers, judges and mental health professionals throughout the state with a more clear, uniform picture of what’s expected.

According to the new code §107.101, “child custody evaluation” now means an “evaluative process ordered by a court

in a contested case through which information, opinions, recommendations, and answers to specific questions asked by the court may be” addressed, including “conservatorship,” “possession of or access to a child,” and “any other issue affecting the best interest of a child.”

Crucial to HB 1449 are new rules that help to rectify grey areas between the Texas Licensing Act and the Family Code involving specific requirements pertaining to both the credentials of the evaluator and what an evaluation should entail.

Previously, evaluators were required to possess only a bachelor’s degree. Now, an evaluator must have least a master’s

degree in a human services field and a license to practice in Texas as a social worker, professional counselor, marriage and family therapist, or psychologist, or a license to practice medicine in Texas and a board certification in psychiatry.

The update also establishes a benchmark for the type and amount of experience a child custody evaluator must possess. Because the “minimum qualifications” are now more stringent, the emphasis on quality will come with some sacrifice in quantity, as there will be fewer people who meet the new exacting qualifications.

To offset the potential impact on the state’s least-populated areas, HB 1449 provides relief. With the written approval of both parties in the case, courts in counties with populations of fewer than 500,000 may appoint an evaluator who they deem otherwise qualified.

The code reflects a number of “musts” about a child custody evaluation:

- Evaluators must disclose potential conflicts of interest or bias.
- Evaluators must keep track of and disclose any substantive communication with involved attorneys.



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- All sources of evidentiary material must be identified, the basis for conclusions/recommendations and the reasons for supporting them clearly stated by evaluators.

- Reports must balance both sides. If the evaluator doesn't, they "shall refrain from conservatorship or possession and access recommendations."

The exacting rules for the elements of an evaluation are spelled out in §107.109 and must be followed, absent a compelling explanation from the evaluator of the reason why not and the likely impact that the missing element would have.

Per §107.108(g), in order to be considered adequate for the court, all child custody evaluations must be conducted in compliance with the new rules.

In examining the expert, attorneys should review what is required of them: Did the evaluator interview each party, including each child? Was the

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child observed in the presence of each party to the suit?

In an innovative nuance, the law requires observations and interviews of all children who are full-time residents of a household be evaluated (not just those before the court). This will prevent children, such as step-siblings, from being neglected from consideration.

Evaluators will watch to see

how each child in the home relates to others and behaves in one space versus another. Other "musts" for the evaluator are criminal histories of every household member, relevant school records, and physical and mental health records of the parties and children.

Additionally, the evaluator will observe the child with each adult who lives in a residence in order to capture information on that was often neglected.

Finally, the report is to come out before the earlier of the third day after the child custody evaluation is complete, or the 30th day before the date of commencement of trial.

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